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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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Attorney and Counselor at Law

Admitted in Virginia and
the District of Columbia

February 10, 2000

Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
Washington, D.C. 20554

Re: MM Docket Nos. 00-10 and 99-292, RM-9260

Dear Ms. Salas:

On behalf of Proclaim Broadcasting, Inc., I am submitting herewith an original and four copies of Comments in response to the FCC's *Notice of Proposed Rule Making* ("NPRM") in the above-captioned proceeding, FCC 00-16, released January 13, 2000. I am submitting, also, four additional copies in the comments, reflecting the second docket number and rulemaking petition number listed in the caption.

Any questions concerning this matter should be directed to me.

Sincerely,


J. Geoffrey Bentley

Attorney for Proclaim Broadcasting, Inc.

Enclosures

Messenger and Overnight Delivery to 2700 Copper Creek Road, Herndon, VA 20171

Handwritten: 078
Stamp: MAR 1 2000

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

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Establishment of a Class A

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Television Service

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MM Docket No. 00-10

MM Docket No. 99-292

RM-9260

To: The Commission

COMMENTS OF PROCLAIM BROADCASTING, INC.

Proclaim Broadcasting, Inc. ("Proclaim"), licensee of low power television station W48BM, Scottsville, Kentucky, through counsel, hereby submits these Comments concerning the FCC's *Notice of Proposed Rule Making* ("NPRM") in the above-captioned proceeding, FCC 00-16, released January 13, 2000. Pursuant to the provisions of the Community Broadcasters Protection Act (the "CBPA") and the FCC's *Public Notice*, "Mass Media Bureau Implements Community Broadcasters Protection Act of 1999," released December 13, 1999, Proclaim filed a "Certification of Eligibility for Class A Low Power Television Status" for W48BM with the FCC on January 28, 2000. W48BM meets the CBPA's four specific criteria for eligibility for Class A status: for more than a year prior to the enactment of the CBPA, W48BM has (1) broadcast 24 hours a day; (2) broadcast several hours each day of high-quality locally-originated programming, produced with the latest digital program origination equipment; (3) complied with all of the FCC's requirements for low power television stations, and (4) as part of its program of asserting carriage rights on cable systems in its service area under Sections 76.55(d) and 76.56(b)(3) of the Rules, complied with all applicable requirements for

full-power television stations in Part 73 of the Rules. In short, in its operations, W48BM is precisely the sort of low power station Congress in the CBPA intended to “protect” by the extension of service contour protection through Class A license status. See H. Rept. No. 106-464, *Congressional Record*, November 9, 1999, p. H11769 (the “House Conference Report”), at H11809 (“the conferees seek to buttress the commercial viability of those LPTV stations which can demonstrate that they provide valuable programming to their communities”).

W48BM is, however, at risk of displacement because of the allotment of DTV Channel 48 to Bowling Green, Kentucky, in the FCC’s *Sixth Report and Order* in MM Docket No. 87-268, FCC 97-115, released April 21, 1997. As of this moment, WKGB-TV, Bowling Green, has not filed an application for DTV operation on Channel 48, and displacement of W48BM is not, therefore, “imminent.” However, the deadline for noncommercial educational stations to file their initial applications for DTV authority is May 1, 2000, and, because of the diminishing availability of spectrum, Proclaim has filed a “displacement” application for authority to operate on Channel 57 once WKGB-TV does commence DTV operations; according to Proclaim’s engineering consultant, Channel 57 is the *only* available alternative channel.

Thus, while currently eligible for a Class A license, W48BM, almost certainly, will be forced to relocate its operation to one of the channels where the CBPA prohibits the FCC from granting a Class A license. 47 U.S.C. § 336(f)(6). Then, when the transition to DTV is completed, W48BM will be part of a group of stations Congress has directed, in the same section of the statute, shall be issued Class A licenses “simultaneously” with the assignment of a permanent channel within the so-called “core” spectrum, Channels 2-51. (See also, *House Conference Report* at H11809: “[T]he

FCC *shall* provide to LPTV stations assigned to, and temporarily operating on, those channels [52-59] the opportunity to qualify for a Class A license.” Emphasis added.)

No provision in the CBPA requires the FCC to refuse a Class A license to W48BM and other similarly situated LPTV stations on their present channels, even though those stations may be displaced by future full-power stations operating on channels in the DTV Table of Allotments. In fact, the eligibility criteria in the statute are few and very specific. The possibility of displacement is simply not mentioned, let alone made a basis for disqualification.

The question, then, is not whether W48BM is eligible for a Class A license but, rather, what should be the status of W48BM and other Class A-eligible LPTV licensees when they are displaced, by necessity, to temporary channels outside the core spectrum. The *NPRM* suggests (§ 24) that protecting the service contours of such stations would be contrary to the intent of the provision of the statute that prohibits the granting of Class A licenses for stations on Channels 52-59. The answer is that protecting the service contour of a displaced Class A LPTV station does not, by itself, imply a Class A license. Rather, it is a temporary measure that will terminate when the transition to the core spectrum is complete. Moreover, continued protection -- and the issuance of a regular Class A license for indefinite operation -- will be dependent on the ability of the station to move to a new channel in the core spectrum at the end of the transition.

Without contour protection during temporary operation on Channels 52-59, a displaced Class A station could go from a “primary” service to a “secondary” service in the Channel 52-59 band to a problematic future in the core spectrum -- hardly the stability required to justify investment in equipment, programming and other service to the community. Indeed, without contour protection, W48BM and other similarly situated stations will run the risk of being twice displaced, even before

the transition to the core spectrum is completed. With no other available channels for LPTV operation, the result would be loss of service to Scottsville and other communities. Thus, protection of a displaced Class A LPTV station's interim service contour (pending conversion to the core spectrum at the end of the transition period) is necessary to assure advancement of Congress's purpose of enhancing the commercial viability of LPTV stations that provide valuable programming to their communities.

The final rules adopted by the FCC, therefore, should make it clear that (1) LPTV stations that meet the CBPA's specific eligibility criteria for Class A status will be awarded Class A licenses even though potentially subject to displacement by full-power DTV stations; and (2) Class A LPTV licensees displaced by full-power DTV stations to channels outside the core spectrum will nonetheless be protected against new interference within the displacement station's service contours pending relocation to a channel in the core spectrum at the conclusion of the transition.

Respectfully submitted,

PROCLAIM BROADCASTING, INC.

By 

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